

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH DAKOTA  
SOUTHERN DIVISION

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UNITED STATES OF AMERICA,

CR 19 -40080

Plaintiff,

PLEA AGREEMENT

vs.

HULTGREN CONSTRUCTION, L.L.C.,

Defendant.

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Defendant Hultgren Construction, L.L.C., the Defendant's attorney, and the United States Attorney for the District of South Dakota hereby submit the following Plea Agreement to the United States District Court, which Agreement was reached pursuant to discussions between the United States Attorney and the Defendant's attorney. The Agreement is as follows:

**A. ACKNOWLEDGMENT AND WAIVER OF RIGHTS AND UNDERSTANDING OF MAXIMUM PENALTIES:** The Defendant agrees that it has been fully advised of its statutory and constitutional rights herein, and that it has been informed of the charges and allegations against it and the penalty therefor, and that it understands same. The Defendant further agrees that it understands that by entering a plea of guilty as set forth hereafter, it will be waiving certain statutory and constitutional rights to which it is otherwise entitled.

**B. PLEA AGREEMENT PROCEDURE - NO RIGHT TO WITHDRAW PLEA IF COURT REJECTS RECOMMENDATION:** The United States and the Defendant agree that this Plea Agreement is presented to the Court pursuant to

Rule 11(c)(1)(B) of the Federal Rules of Criminal Procedure which authorizes the United States to agree that it will recommend, or agree not to oppose, the Defendant's request that a particular sentence or sentencing range is appropriate or that a particular provision of the Sentencing Guidelines, or policy statement, or sentencing factor, does or does not apply. Such agreements and recommendations are not binding on the Court, and the Defendant may not withdraw its plea of guilty if the Court rejects them.

**C. PLEA OF GUILTY TO CHARGE:** Pursuant to Federal Rule of Criminal Procedure 43, Defendant Hultgren Construction, L.L.C., agrees that it shall designate a duly authorized corporate representative to personally appear at all proceedings associated with this criminal case.

Defendant Hultgren Construction, L.L.C., will plead guilty to the Information charging it with Willful Violation of the Occupational, Safety, and Health Act Causing Death to Employee, in violation of 29 U.S.C. § 666(e). The charge carries the maximum penalties of a \$500,000 fine, and a period of probation of 5 years. There is also a \$50 assessment to the victims' assistance fund.

**D. VIOLATION OF TERMS AND CONDITIONS:** The Defendant acknowledges and understands that if it violates the terms of this plea agreement, engages in any further criminal activity, or fails to appear for sentencing, this plea agreement shall become voidable at the discretion of the United States and the Defendant will face the following consequences:

- (1) All testimony and other information the Defendant has provided at any time to attorneys, employees, or law enforcement officers of the United

States, to the Court, or to the federal grand jury may and will be used against it in any prosecution or proceeding.

(2) The United States will be entitled to reinstate previously dismissed charges and/or pursue additional charges against the Defendant, and to use any information obtained directly or indirectly from the Defendant in those additional prosecutions.

(3) The United States will be released from any obligations, agreements, or restrictions imposed upon it under this plea agreement.

**E. RECOMMENDATION REGARDING SENTENCE – ANY SENTENCE WITHIN STATUTORY LIMITS AND RESTITUTION:** At the sentencing hearing, both the United States and the Defendant are free to recommend whatever sentence each feels is appropriate, within statutory limits, present evidence, and make arguments in support thereof. The Defendant understands that any recommendation made by it or the United States is not binding on the Court. The Defendant further understands that it may not withdraw its plea of guilty if the Court rejects any recommendation.

**F. SPECIAL ASSESSMENT:** The Defendant agrees to remit to the U.S. Clerk of Court, 400 South Phillips Avenue, Sioux Falls, South Dakota 57104, no later than two weeks prior to sentencing, a certified or cashier's check payable to the "U.S. Clerk of Court" in the amount of \$50, in full satisfaction of the statutory costs pursuant to 18 U.S.C. § 3013.

**G. RESTITUTION – AGREEMENT TO PAY:** The Defendant hereby agrees to make restitution to the victims for Defendant's conduct set forth in the

Information, this Plea Agreement (including the Factual Basis Statement), and the presentence investigation report, pursuant to 18 U.S.C. §§ 3663 and 3663A.

**H. MONETARY OBLIGATIONS – DEFENDANT'S ONGOING DUTY:** If the Defendant does not have sufficient financial resources to immediately satisfy the financial obligations imposed upon it at sentencing, the Defendant agrees, if requested by the United States, to promptly execute and return an executed Authorization to Release Financial Records and Documents, an executed Authorization to Release Tax Returns and Attachments and an executed Financial Statement. The Defendant understands that this is an ongoing duty which continues until such time as payment is remitted in full. The Defendant also may be required to furnish the requested information, as well as current earnings statements and copies of its W-2s even if the request is made after it has been sentenced. The Defendant agrees to assist the United States in identifying, locating, returning, and transferring assets for use in payment of any financial obligations imposed as part of the sentence in this case.

**J. RESERVING THE RIGHT TO REBUT OR CLARIFY MITIGATION INFORMATION:** The United States reserves the right to rebut or clarify matters set forth in the presentence investigation report, or raised by the Defendant in mitigation of its sentence, with evidence and argument.

**K. BASIS FOR PLEA OF GUILTY:** The Defendant agrees that the statement of facts, signed by the parties and incorporated herein by this reference, provides the basis for its guilty plea in this case, and is a true and accurate statement of the Defendant's actions or omissions with regard to the

charges to which it is entering a plea, and that the Court may rely thereon in determining the basis for its plea of guilty as provided for in this plea agreement.

**L. WAIVER OF SPEEDY TRIAL:** The Defendant agrees to waive any rights to a speedy trial under either the United States constitution or the Speedy Trial Act. This waiver is necessary so that the Court will have the benefit of all relevant information at sentencing.

**N. PARTIES BOUND:** It is further understood and agreed that this agreement is limited to the United States Attorney's Office for the District of South Dakota, and that this agreement cannot and does not bind other federal, state, or local prosecuting authorities.

**O. SCOPE OF AGREEMENT:** This agreement shall include any attachments, exhibits or supplements designated by the parties. It is further understood and agreed that no additional promises, agreements, or conditions have been entered into other than those set forth in this agreement, and this agreement supersedes any earlier or other understanding or agreement.

**P. WAIVER OF DEFENSES AND APPEAL RIGHTS:** The Defendant hereby waives all defenses and its right to appeal any non-jurisdictional issues.

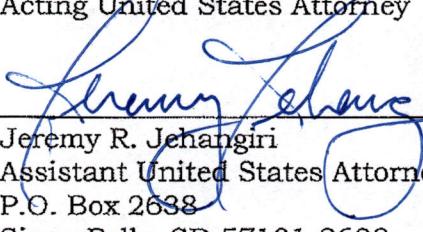
#### **SUPPLEMENT TO PLEA AGREEMENT**

The United States will file a Supplement to Plea Agreement which is required to be filed in every case in compliance with the Court's Standing Order.

DENNIS R. HOLMES  
Acting United States Attorney

Date

9/5/19

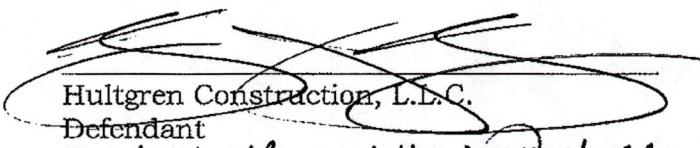
  
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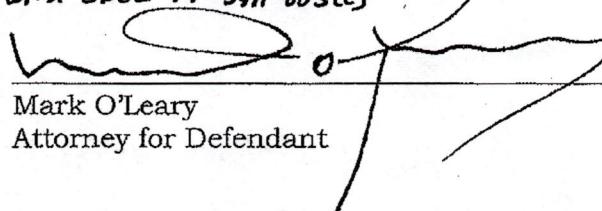
APPROVED:  
DENNIS R. HOLMES  
Acting United States Attorney

  
DENNIS R. HOLMES

Date

9/5/19

  
Hultgren Construction, L.L.C.  
Defendant

  
Signed as Legal Representative in accordance  
with SDCL 47-34A-803(c)

Mark O'Leary  
Attorney for Defendant